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FAX NUMBER: 202-418-2813

FROM: TOM JUHACEK

NUMBER OF PAGES (INCLUDING COVER): 9

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THIS SENT TO MEET 5:30 FILING DEADLINE.

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February 27, 1995

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Office of the Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, DC 20554

Dear Sirs:

Enclosed please find a mailed copy of comments furnished to the Federal Communications Commission on February 27, 1995. These comments were originally FAXED to your office in order to meet a 5:30 pm filing deadline. Thank you for your assistance.

Sincerely,

Thomas J. Juracek
Controller

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the	)	MM Docket No. 92-266
Cable Television Consumer Protection	)	
and Competition Act of 1992: Rate Regulation	)	MM Docket No. 93-215
	)	

Comments of Thomas J. Juracek
Controller, Fanch Communications, Inc.
RE: Ex Parte Communication
February 27, 1995

Changes to Rate Review Timing by Franchise Authorities

As the rules are presently written, a far greater burden is placed upon the cable operator to comply with time frames regarding the filing of rate information than is imposed upon franchise authorities to respond to a rate filing. Generally, a cable operator must respond to a franchise authority's notice to regulate rates within 30 days. The franchise authority has 30 days in which to review the filing. However, the franchise authority is given the opportunity to toll its review deadline and extend the time to review a rate filing for 90 days or 120 days based upon the form filed. Further, the franchise authority can issue an accounting order at the end of the extended time frame requiring the operator to maintain records for a potential refund liability. The franchise authority then has an indefinite amount of time during which to review a rate filing.

The lack of a requirement for a franchise authority to take definitive action places a substantial burden on the cable operator. The operator is never certain of which actions it may take to recover changes in costs allowed under Commission rules. For example, a cable operator has filed Form 1200 with a franchise authority and that filing has been tolled. The tolling period has now expired with only an accounting order being issued by the franchise authority. Can the operator launch programming and file for the increased headend and programming costs while its initial rate filing is tolled? Is the operator entitled to claim an inflation increase? Currently the answer is unclear. Further, if the operator files for the increase, what happens if the franchise authority tolls this filing?

Because the operator is placed in an uncertain position it is unable to offer increased variety in its programming to subscribers. In areas where multiple franchises are served from the same headend, some subscribers may be denied the opportunity to have increased product as a result of one of the franchises tolling a rate filing while the remaining franchises have approved the rates.

From the small MSO's perspective, it can be extremely difficult to track rate filings and the status of rates in situations such as this. Programming agreements are often entered into that require the operator to launch a particular programming service to a minimum number of subscribers within a specified amount of time. With no resolution of a rate filing, the operator is placed in the position of enhancing cable programming to subscribers without being certain that it can recover the associated costs.

The Commission has recently released rules that make the calculation of external cost increases associated with increased program offerings straight forward. The latest rules allow the pass through of a flat 20 cent charge for the increase, plus an additional amount to cover increased programming costs (the 'License Fee Reserve'). The increase associated with a programming addition such as this should be routine and should not require a tolling period.

Another issue that the operator deals with is the 'automatic' tolling of any rate filings submitted to a franchise authority. This includes filings that contain nothing more than a request to recover inflation adjustments. In this instance the franchise authority already knows the operator's current rate (approved or not) from prior filings. The inflation factor is generally available and is published by the Commission. A simple mathematical calculation (which the operator has already performed) is all that is required to ascertain whether the operator has correctly calculated the allowed inflation increase correctly.

My recommendation for situations such as this is to allow all rate filings based upon Commission approved guidelines a maximum of 30 days for review. This deadline would apply to all supplemental filings (Form 1210). In instances where the operator has filed for an inflation increase and the tolling period has expired but a rate order has not been issued, the inflation increase would be correctly calculated on the previously filed rate. Should the operator's rate be lowered at some future time, any adjustment would be made to inflationary rate increases at that time, without penalty to the operator.

For example, the operator files for an approved rate of $18.00. The operator then files for an inflation increase of 3% or 54 cents. The filing for the inflation increase must be acted upon within 30 days or it is automatically approved. If at some time in the future the franchise authority should approve a $17.00 rate, the inflation differential of 3 cents would be incorporated into a future rate filing, without penalty or refund liability to the cable operator.

This same methodology should apply to other Form 1210 based filings. There are no calculations contained within this form that require an extended time to review, unless the franchise authority does not have adequate resources to administer rate regulation. Channel additions based upon either the original rules or the revised guidelines are straight forward and the information readily available. Changes in external costs for programming that is currently provided can be evidenced by copies of invoices or other documentation showing the change in rates charged by programmers.

Expiration of External Costs and Timing of Filings

As the individual responsible for the coordination and filing of all rate regulation forms for a small MSO, the requirements of filing numerous 1210's per quarter for over 300 cable systems is extremely burdensome. Keeping track of filing times, required changes from prior filings, and which costs are allowed to be included in future filings is extremely time consuming. Further, the sheer volume of the rate filings may lead to

incorrect calculations simply because of the number of variables built into the current rules.

Maintaining and calculating programming cost changes for over 300 headends, each with a different channel lineup, takes a tremendous amount of resources. Combine this with rate changes from programmers taking effect almost every month of the year, and it is virtually impossible to keep up with a quarterly filing requirement to increase rates. Because of the Commission's current position that all external costs must be factored into rates within one year, or the potential rate increase is lost, the small MSO faces a tremendous reporting burden. At current reporting levels, I am potentially required to file approximately 1,200 Form 1210 filings each year, numerous filings of Form 1205 (due on a different due date), and an untold amount of time and correspondence with franchise authorities explaining each filing. This appears to run against the mandate that Congress laid out in the 1992 Cable Act regarding the small system regulatory burden.

Over the past year, I have had discussions with local franchise authorities regarding the impact of rate regulation on them. Many have commented that the review burden of the numerous forms and calculations has been overwhelming. At times they have been forced to seek outside assistance in the review of rate filings. This has placed them in the position of using franchise fees for outside counsel or consultants, rather than using franchise fees for other purposes of greater benefit to the community.

These comments have come from franchise authorities in locations where the cable system has 100 subscribers to locations where the cable system has 5,000

subscribers. Some franchise authorities, I believe, are coming to the realization that the rules are too complex and require too many filings. Although they would like to take an active part in rate regulation, they are unwilling to continue as long as the burden of complying with the current regulatory framework results in a tremendous amount of resources expended in the process.

I believe that the Commission's current stance on filing requirements reflects only an attempt to make certain that cable operators comply with filing requirements, and does not adequately address the small franchise authority. Currently, in compliance with the Eighth Order on Reconsideration, a small MSO and a local franchise authority can alleviate the rate regulation burden by entering into an alternative regulatory framework. But what of the franchise that has 1,000 subscribers but is served by an MSO who has 300,000 subscribers? This franchise authority does not necessarily have any more resources available than the franchise authority with 2,000 subscribers next door who is served by an operator who has only 25,000 subscribers (qualifying as a small MSO). Yet because the Commission believes that the larger operator has adequate resources to comply with all filing requirements, it assumes that the local franchise authority does as well. The franchise authority with 1,000 subscribers is faced with initially reviewing Form 1200, reviewing up to 4 Form 1210's per year and reviewing Form 1205 annually. The larger franchise authority, which presumably has more resources, can have a two or three hour discussion with an operator, reach a rate regulation agreement, and be done with the regulatory process. Faced with a daunting regulatory burden, it is my belief that the smaller franchise authority will abandon rate regulation. It appears to me to be quite

unfair to penalize subscribers in small franchise areas simply because they are served by a larger operator.

My proposal for external cost recovery, timing of filings, expiration of external costs, and recovery of any 'make-up' of external cost increases is relatively simple and straight forward. These filing requirements would apply to all franchise authorities that have fewer than 5,000 subscribers within the franchise area, without taking into account the size of the operator serving the franchise area. My experience indicates that there is not a significant difference in ability and resources to regulate cable rates between the 5,000 subscriber franchise area and the 1,000 subscriber franchise area.

I propose that cable operators be required to file Form 1210 and 1205 only once annually. The timing of the filing is left up to the operator, but both forms must be filed at least once each calendar year. The filing of Form 1210 shall include all changes in costs from the prior filing, and may include increases in costs that will take place within 45 days of the date of the filing (with a minimum 30 day review process, and generally some tolling period, most of these costs will be current by the time the rates are implemented. It is much easier for an operator and a franchise authority to know that all cost changes have been included through the effective date of the rates. As it is under current regulations, programming costs may be current through last quarter, inflation through last year, and subscriber counts through the date of the filing. These various dates make it difficult for either the operator or the franchise authority to review subsequent filings and determine which cost changes cover which periods). Any change in external costs not included in this annual filing would be forfeited. The Form 1205

filing should accompany Form 1210. This allows the operator and the franchise authority to review all applicable rates to be charged at the same time. The Form 1205 filing would continue to be calculated on the basis of the prior year's operating results of the cable operator.

Under this reduced filing burden, it will be the operator's responsibility to ensure that all costs have been adequately accounted for. Any missing costs, inflation changes, channel lineup changes not accounted for will be foregone. It will be the franchise authority's responsibility to act quickly and prudently in reviewing the rate filings and issue a rate order within 30 days of the filing, unless the filing is deficient in supporting documentation or the calculations prove to be incorrect.

This proposal attempts to recognize that the size of the franchise authority (not the cable operator) has a direct impact on its ability to review rate filings, it keeps rate changes and dates current and consistent, places the burden of correct reporting and accounting for costs squarely on the cable operator, eliminates the current uncertainty surrounding rate implementation, channel additions and channel changes due to numerous tolling periods and finally, provides an easy framework for both cable operators and small franchise authorities to work within.